



Department of Land Conservation and Development

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M E M O R A N D U M

February 15, 1985

TO: Cities and Counties, State and Federal Agencies, and Interested Parties

FROM: James F. Ross, Director 

SUBJECT: STATE AGENCY COORDINATION: POLICY REVIEW AND REQUEST FOR COMMENTS

Background

At its January 31, 1985 meeting in Portland, the Commission agreed to undertake a general review of state agency coordination. The overall purpose of this review is to assess the state planning program's achievements in the agency coordination area and determine if any changes in Commission policy or processes are needed in post-acknowledgement. One of the principal items of this review will be to assess the adequacy of the Commission's state agency coordination administrative rule (OAR 660, Division 30). This rule governs the preparation and Commission certification of state agency coordination agreements pursuant to ORS 197.180.

Following adoption of the statewide goals the Commission's top priority has been getting local plans into compliance. This process has seen the active involvement of many state agencies in the preparation and LCDC review of city and county comprehensive plans. Now, with the plan development phase almost finished, the Commission and Department can give greater attention to state agency coordination. The fact that many jurisdictions have been acknowledged for several years or longer combined with the pending start up of the periodic review process only underscores the need to update the agency coordination element of the state planning program.

This review of agency coordination is prompted also by potential conflicts arising between state agencies and local plan implementation. Several efforts currently are being made legislatively to exempt certain

agency activities from coordination with comprehensive plans. Similarly, at the local level, positions have been expressed lately by a number of jurisdictions citing the authority of their acknowledged plans as the legal basis to compel certain agencies to act in ways which may be contrary to the agencies' statutory mandates.

Schedule of Review

On January 31 the Commission received a brief staff presentation summarizing past accomplishments and upcoming issues in state agency coordination. The Commission also heard from representatives of state agencies, local government and interest groups and individuals. Following its discussion the Commission directed the Department to prepare for statewide review a general discussion paper on state agency coordination.

This attached paper will be considered by the Commission at its March 7-8, 1985 meeting and will include another opportunity for testimony from interested parties. At the conclusion of this session the Commission will decide whether other actions are in order, including revision of its coordination rule, OAR 660, Division 30. If the Commission determines amendments to this rule are needed, notice will be given to schedule a public hearing to consider changes at either the April 18-19 or May 23-24 meeting.

Parties wishing to react to this paper should forward their comments to the Department's Salem office by February 25 in order for those comments to be included in the Commission's March meeting agenda package. Comments should be addressed to the attention of Jim Knight (378-2973). After this date, comments received will be hand carried to the Commission by the Department or should be brought to the meeting.

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State Agency Coordination: Policy Review and Recommendations

State Agency Coordination - Legal and Policy Basis

A number of features make the Oregon program unique among state land use efforts. These include required citizen involvement, mandatory state planning standards, the local comprehensive plan, a single state body to interpret and enforce the statewide standards, etc. Another one of these key features is the required coordination of state agencies with local comprehensive plans and between and among state agencies for programs affecting land use.

The absence of coordination, both at the local level and between local jurisdictions and state agencies, was one of the major reasons cited in support of the adoption in 1973 of SB 100 (codified as ORS 197). Since 1973 strong state-local coordination in land use planning has remained as a continuing value and objective of three Governors and the Legislature over five subsequent biennia. Although the statute has undergone considerable amendment since its original adoption, ORS 197's preamble findings still state that the uncoordinated use of land is a statewide concern and there is a need for a process to insure that the plans of state and local units of government are reviewed for compliance with the state goals.

In 1973 the Legislature chose not to address the problems of coordination by impressing state agency objectives from the top down at the expense of local interests. The Legislature declared as a matter of state policy, "that coordinated comprehensive plans shall be prepared for cities and counties, regional areas and the state as a whole" (ORS 197.010, emphasis added). To accomplish this policy, comprehensive plans "shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the (comprehensive) plans" (ORS 197.010(4), emphasis added).

The above excerpts reveal the Legislature's clear decision that the local comprehensive plan is to be the state's primary method for achieving coordinated land use decisions for a given area. A plan is deemed coordinated when the needs of all levels of government, semi-public and private agencies and the citizens of Oregon have been accommodated as much as possible (ORS 197.015(5)). The Legislature also recognized that a single agency is needed to set the goals and objectives to be applied by all public agencies in meeting their individual obligations and responsibilities under the state planning act. Toward this end, the Land Conservation and Development Commission is charged with coordinating the "planning efforts of state agencies to assure compliance with the goals and compatibility with city and county comprehensive plans" (ORS 197.040(2)(e), emphasis added).

In addition to the above statutory charges, the Commission itself through the statewide goals has established requirements for achieving the coordination of planning activity between state agencies and local units of government. Goal 2-Land Use Planning, speaks to this coordination most directly in its mandates that

- City, county, state and federal agency and special district plans and actions shall be consistent with city, county and regional comprehensive plans;
- Each plan and its implementing measures be coordinated with the plans of other governmental units operating in the area; and
- Requires the provision of review and comment opportunities for various governmental units in the various steps in preparing, implementing and revising the local comprehensive plan.

Besides Goal 2, state-local coordination is addressed in several other goals including Goal 9 (economy), Goal 12 (transportation), Goal 15 (Greenway), Goal 16 (estuarine resources), Goal 17 (coastal shorelands), Goal 18 (beaches and dunes) and Goal 19 (ocean resources).

The Legislature has provided specific direction in ORS 197.180 which requires that state agencies prepare programs demonstrating how the agencies will assure that their plans, rules and actions which affect land use will comply with the statewide planning goals and be compatible with city and county plans. These agency coordination programs are to be submitted to LCDC for approval, referred to as "certification" in the statute. The content of an agency coordination program and the certification process are described further in the agency coordination rule (OAR 660, Division 30). The major elements of an agency coordination program include:

- The agency's rules and summaries of programs affecting land use;
- The agency's program for complying with the state goals and assuring compatibility with local plans;
- The agency's program for cooperation with and technical assistance to local governments; and
- The agency's program for coordination with other state and federal agencies and special districts.

Pursuant to 197.180, LCDC also adopted an agency rule dealing with the coordination of state permits with the goals and local plans. This rule, OAR 660, Division 31, has classified a variety of state agency permits into two general categories depending upon whether public notice and a hearing are required or can be provided prior to permit issuance. Again,

depending upon the category, the rule requires a state agency to make its own findings of goal compliance and plan compatibility or may rely on a local determination of goal compliance or plan compatibility.

State Agency Coordination 1974-1985

The state land use program has relied primarily on the acknowledgment process to coordinate state agencies with local plans. Substantial and frequent opportunities were afforded state agencies (as well as other interested parties) to actively participate on a case-by-case basis in the preparation, adoption and state compliance review of comprehensive plans. However, because a state agency's involvement in a local plan was discretionary, it has been difficult at times to provide consistent treatment of state-local coordination issues in plan reviews. This problem of consistency was not alleviated by the agency coordination programs adopted during this time. These programs focused more on how state agencies were to be involved in local plans and less on the substantive issues sought by the agencies.

Whether or not conducting substantive analyses of agency programs prior to local plan development would have resulted in improved coordination is outside the scope of this paper. It is the purpose of this paper to present a balanced picture of where state agency coordination stands today and how future issues should be pursued. As was noted in the Department's remarks on January 31 no assessment that the Commission may reach on this subject can be termed complete without hearing from agencies and other participants who have weathered the decade of acknowledgment.

In order to start the discussion, the Department offers several general observations below. We hope they will stimulate others to comment on the paper.

- Most state agencies have learned much about coordinating agency interests with the state land use program and especially the local comprehensive planning process. Even so, many agencies are just beginning to comprehend the role and impact of acknowledged comprehensive plans on their program and day-to-day operations;
- All applicable state agencies (and major divisions thereof) possess agency coordination programs with the Commission which were established in 1978-79. Only five (Geology, Energy, DEQ, Transportation and Health Division) have had their programs certified as required by the 1981 statutory amendments;

- Out of the approximately 30 agencies with coordination programs, only a small core group of agencies remained as regular participants in the acknowledgment process;
- Considerable success has been achieved in the state permit consistency area where the statute and LCDC rule (OAR 660, Division 31) have established requirements for assuring coordination of permits with the statewide goals and local plans, particularly in the coastal zone;
- The dedication and continuity of key staff people in the most active agencies are as much if not more responsible for institutional success on land use and coordination issues as opposed to factors such as the actual terms of their agencies' coordination programs;
- Federal agencies, on the whole, when compared to their state counterparts, have been much less involved in local plan development and acknowledgment;
- The acknowledgment process has seen very few initiatives by local jurisdictions to use their plans to regulate or limit state agency activities affecting land use. However, indications are that this situation may change as more local governments seek to interpret or amend their acknowledged plans to regulate agencies;
- Some agencies view the results of the acknowledgment process less favorably because of factors which caused the agencies to accept less or pass over compliance or coordination issues they otherwise would have called out;
- Generally speaking, agencies responsible for managing or developing fixed facilities like airports have encountered less resistance from local governments in having their interests addressed in comprehensive plans than have natural resource management agencies;
- Many agencies active in the acknowledgment process, especially those with limited staff, have found that their involvement has been costly, often exceeding budgeted personnel and time resources. The prospect of not being able to sustain continued high or higher levels of effective participation in post-acknowledgment in reviewing amendments, periodic review and revising agency coordination programs is a source of major concern to them;
- In many compliance situations, some agencies have opted on occasions to let the Department and Commission "carry the agencies' water" rather than endure the costs in terms of public

exposure and confrontation with the jurisdiction in the acknowledgment proceeding;

- Due to the nature of the jurisdiction by jurisdiction acknowledgment process, coordination of statewide and regional issues has not received much attention by the state land use program. There have been several noteworthy exceptions through coastal goal reviews and regional issues considered in the plans for the largest metropolitan areas; and
- The state-local partnership is criticized by some local governments who believe local control and land owner rights have been lost due to the state planning program. Similarly, some state agencies view the efforts in the last few years to hasten the completion of the acknowledgment process as coming at the expense of their interests and programs.

This list of developments in state coordination area should not be seen as complete or comprehensive. The comments of others on this summary will allow the Commission to gain a reliable, objective evaluation of what has been gained by the acknowledgment process in the pursuit of a coordinated state land use management system.

State Agency Coordination - Future Issues and Recommendations

With the above as a basis for discussion, it is appropriate next to seek to establish a consensus on the critical agency coordination issues that need to be faced in post-acknowledgment.

Unlike our sister agencies, the Commission's and Department's mission requires our agency to make constant, frequent judgments about the meaning of the state's interests in the land use planning context. This has been and will continue to be a difficult task that often is borne with few allies. Most public and private participants in the process have matured and are much more capable of asserting their interests in an effective manner. Another fact is that acknowledged cities and counties are becoming more and more willing to test their plans and the state program's promises that acknowledgment means a much greater degree of control over what state agencies do in their jurisdictions. This in turn leads to apprehension and uncertainty on the part of state agencies as they seek to carry out their duties which affect land use. These conflicting tendencies must be reconciled to avoid undermining the basic state-local relationship so fundamental to Oregon's planning program.

It is for these reasons that the time is right for the Commission to take stock of state agency coordination and move quickly to reestablish the purpose and rules of the game. Especially important is the need to restate for both state agencies and local governments the mutual expectations and benefits both sides can realize from the state planning program.

For the present, it appears that no revisions to ORS 197 or the statewide goals are needed to address state agency coordination. Listed below are four categories with suggested recommendations for upgrading the Commission's state agency coordination policies and procedures for the post-acknowledgment period.

1. General Policy Statements

It is recommended that the Commission, possibly in conjunction with amendment of the agency coordination rule, issue a comprehensive position statement expressing its views about the role of state agency coordination in the land use program. This statement should include the following points:

- The Commission continues to view the local comprehensive plan as the centerpiece of the state land use program and, to the extent possible under the law, will rely on the local plan as the basis for coordination with state agencies and other units of government. However, the Commission also accepts the principle that in some instances, coordination may require the state's interest to prevail over the position of a jurisdiction in a conflict between an agency and a local plan.
- The Commission recognizes the importance of providing clear directions to state and local units of government to satisfy the coordination requirements under ORS 197.180;
- The overall objective of coordination is the avoidance of or timely resolution of conflicts;
- The Commission and Department are committed to working with agencies and local jurisdictions to establish techniques and procedures through coordination programs and comprehensive plans to avoid or minimize local review of routine agency operational activities;
- The Commission will, on a regular basis, evaluate its state agency coordination policies and procedures;
- The Commission intends to increase its efforts to coordinate federal agencies with state agencies and local jurisdictions on the coast and throughout the state;
- The Commission and Department are willing to mediate state-local conflicts where such mediation is requested; and
- The Commission believes in and supports the value of adequate staff and budget resources to enable state agencies to participate meaningfully in post-acknowledgment coordination activities.

2. Administrative Rules

Although additional discussion and review are appropriate, the Department believes that revision to the Commission's two agency coordination rules (OAR 660, Division 30-coordination programs and 660, Division 31-permit consistency) appears to be warranted. The coordination program rule in particular should be updated to provide the necessary direction for modifying agency coordination programs to address plan amendments and periodic review. Possible changes might include:

- Directing agencies to be much more specific about how they will coordinate with other units of government and what they want other governmental bodies to address in the agencies' plans and programs;
- Establishing a more specific process for resolving agency/local plan conflicts outside of periodic review;
- Including a separate section in the coordination rule addressing effective agency participation in the state coastal management program;
- Describing in some detail how agency programs will be reviewed by DLCD/LCDC against the goals and local plans for certification;
- Clarifying the rule's definition of "program affecting land use," and "certification" and reconciling the terms, "compatibility" and "consistency;"
- Establishing a regular fixed schedule for reexamining agency coordination program certifications, i.e., a periodic review process for agency coordination programs;
- Standardizing agency permit consistency statements (see OAR 660, Division 31);
- Providing direction to applicable agencies for meeting the statutory requirements in ORS 197 for promoting public facility planning and economic development;
- Considering requiring the adoption of agency coordination programs by administrative rule; and
- Clarifying the format of agency coordination programs and the need of formal adoption by the director or board or commission of the program.

The Commission's permit consistency rule (OAR 660, Division 31) recently was revised in August, 1984. Several aspects of this rule that may involve strengthening include standardizing the permit consistency

statements (also mentioned above) and updating the list of A and B permits issued by the agencies.

3. Agency Coordination Programs

The most significant item in revised agency coordination programs must be a clearer distinction about what are and are not agency plans and programs affecting land use. A coordination program approved by the Commission which establishes these two categories, if recognized by LUBA and the courts, could serve as a very real incentive for an agency to seek certification. The other important element that should be addressed is for each agency to develop a special conflict resolution process to deal with unanticipated situations involving local jurisdictions.

4. Other Commission/Department Activities

Making state agency coordination function effectively will require more than Commission policy statements, revised rules and certified agency coordination programs. It will also depend upon adequate resources within each agency to do the job. Finally, agencies, like local governments, need to perceive that there are concrete, tangible benefits which will result from their efforts to coordinate with local government and the state land use program.

While responding to some of the above is beyond the Commission's own authority, the Commission should direct the Department to engage in a variety of tasks and activities to promote successful coordination. Items in this area include:

- Establishing and maintaining contacts among key agency staff with local government staff on a regular, on-going basis;
- Providing periodic technical and policy briefings to agencies on recent Commission policy decisions, rules, etc.;
- Providing more frequent opportunities for representatives of the Governor's office, elected officials and agency directors and board/commission members to discuss matters of mutual concern; and
- Cooperating more with other agency personnel to coordinate state agency policies and resources to assist local government in strengthening local plans.